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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13
 14 THE ESTATE OF B.H., JOHN HERNDON,
 J.H., a minor, T.H., a minor, on behalf of
 15 themselves and all other similarly situated,

16 Plaintiffs,

17 vs.

18 NETFLIX, INC.,

19 Defendant.

Case No. 4:21-cv-06561-YGR

**NETFLIX'S STATEMENT IN RESPONSE
 TO COURT'S NOVEMBER 10, 2025
 ORDER REQUIRING STATEMENT ON
 NEXT STEPS IF ANY**

Date: November 20, 2025

Ctrm: 1

Judge: Yvonne Gonzalez Rogers

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 21 On November 10, 2025, this Court issued an order stating that its prior dismissal of the
 22 action stands and requiring that the parties "meet and confer and provide with the Court with a
 23 written statement as to next steps, if any, by no later than November 20, 2025." Dkt. No. 116.
 24 The parties have met and conferred and disagree about what next steps, if any, are required.
 25 Accordingly, Netflix provides this statement in response to the Court's order.

26 The Ninth Circuit remanded this case in order for this Court to answer a single question:
 27 "what effect, if any, the Supreme Court's decision in *Royal Canin* has on the subject matter

1 jurisdiction in this case.” Dkt. Nos. 94, 95. This Court has now answered that question, ruling
 2 that under *Royal Canin* this Court’s prior “dismissal on the merits stands.” Dkt. No. 116.

3 Netflix respectfully states that the only next step that should be taken here is entry of
 4 judgment in favor of Netflix, and Netflix requests entry of such a judgment. *See* Fed. R. Civ. P.
 5 58(d); *see also* Fed. R. Civ. P. 54(a). In the alternative, this Court could choose to simply rest on
 6 its November 10 order, which constitutes a final decision. *See* Fed. R. Civ. P. 54(a); *see also* 28
 7 U.S.C. § 1291(a) (referring to “final decisions of district courts”); *Gelboim v. Bank of Am. Corp.*,
 8 574 U.S. 405, 409 (2015) (explaining what qualifies as such a “final decision[]”). But Netflix
 9 respectfully suggests that entry of a judgment in a separate document would provide greater clarity
 10 going forward. That judgment would not be different in effect from this Court’s existing dismissal
 11 in Netflix’s favor. *See* Dkt. Nos. 74, 76.

12 It is Netflix’s understanding that plaintiffs plan to ask this Court to reopen the case on a
 13 variety of different grounds, including to amend its prior dismissal order to reflect subsequent
 14 decisions and events and to further address subject-matter jurisdiction. But no such additional
 15 proceedings are permissible here. Under the mandate rule, this Court may not “vary” or
 16 “intermeddle” with the Ninth Circuit’s remand order, “give any other or further relief,”
 17 “review . . . any matter decided on appeal,” or do anything other than “settle so much as has been
 18 remanded.” *Alaska Dep’t of Fish & Game v. Fed. Subsistence Bd.*, 139 F.4th 773, 787 (9th Cir.
 19 2025) (citation omitted). Indeed, this Court lacks jurisdiction to go outside the scope of the Ninth
 20 Circuit’s remand. *See id.* (“[I]n this circuit, if a district court errs by violating the rule of mandate,
 21 the error is a jurisdictional one.” (citation omitted)). Here, the remand from the court of appeals
 22 asked only whether subject-matter jurisdiction continues to exist in light of *Royal Canin*, and this
 23 Court has fully resolved that issue.

24 In addition, even apart from the mandate rule, the fact that the Supreme Court and the
 25 Ninth Circuit directed further consideration of one narrow issue in this Court provides no warrant
 26 for any further reopening of the issues in this case, which has been fully and thoroughly litigated
 27 for many years. Plaintiffs here have no more right to raise new issues in this Court at this stage
 28 than would any other litigant who had a full and fair opportunity to be heard in this Court and in

1 the court of appeals and lost in both venues. If the rule were otherwise, then *any* remand from the
 2 court of appeals to this Court, however narrow, would give a party a second bite at the apple on a
 3 whole range of issues—a result that would be deeply inefficient for this Court and unfair to the
 4 opposing party. *Alaska Dep’t of Fish & Game*, 139 F.4th at 789.

5 That is especially true in this case. The issues that plaintiffs have stated they will ask this
 6 Court to address are irrelevant, as they do not affect the propriety of dismissal in favor of Netflix
 7 (which this Court ordered on multiple independently sufficient grounds, *see* Dkt. Nos. 74, 76); are
 8 barred by law of the case because they were raised and rejected at an earlier stage in this Court and
 9 decided as part of the prior appeal, either expressly or by necessary implication, *see Al-Safin v.*
 10 *Cir. City Stores, Inc.*, 394 F.3d 1254, 1258 (9th Cir. 2005); and/or are lacking in any merit.

11 For all of those reasons, this Court should not take any next steps other than entry of
 12 judgment for Netflix. But if the Court were to elect to go outside of the Ninth Circuit’s remand
 13 order and consider holding further proceedings on any of the grounds that Netflix understands
 14 plaintiffs plan to raise,¹ Netflix respectfully requests an opportunity to respond to those grounds in
 15 detail before the Court finally decides whether to move forward with such proceedings.

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27 ¹ Although the parties met and conferred yesterday, plaintiffs’ counsel suggested that plaintiffs
 28 might raise additional issues in the statement that plaintiffs file today, and—given simultaneous
 submission of the parties’ statements—Netflix has not had the benefit of a full written description
 of any issues plaintiffs contend this Court should address.

1 Respectfully submitted,
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3 DATED: November 20, 2025

MUNGER, TOLLES & OLSON LLP

5 By: /s/ Blanca F. Young

6 BLANCA F. YOUNG

7 Attorneys for NETFLIX, INC.

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